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As the scope of the state's operations widens with the growing complexity of social and economic conditions, the problem of determining what are proper governmental functions becomes increasingly difficult. This is illustrated by a recent case in the Supreme Court of the United States. The state of South Carolina, in its efforts to regulate the liquor traffic, had established a dispensary system, and prohibited the sale of liquor by any but its own officers, who sold under certain wholesome restrictions. Under its internal revenue system, the United States imposed upon the dispensers a license tax, from which the state claimed exemption on the ground that the dispensary system was a means employed by it in the execution of its police power. The court, however, though bound by a previous ruling<sup>11</sup> to concede that this dispensary system was a valid exercise of the state's police power, supported the tax on two main grounds: first, that unless it were held valid, the states might cut off the nation's income by engaging in all the industries subject to internal revenue taxes; and second, that in carrying on the liquor business the state was not performing the ordinary functions of a government. A minority of the court, in a strong dissenting opinion, took issue on the second point, and further argued that not only did the first point lose its force because of the undoubted power of the states to cut off the nation's revenue directly by absolutely forbidding the sale of liquor entirely, but also that it amounted to this: "that the government created by the Constitution must now be destroyed, because it is possible to suggest conditions, which, if they arise, would in the future produce a like result." *State of So. Carolina v. U. S.*, U. S. Sup. Ct., Dec. 4, 1905.

Though opinions may differ as to what are the proper functions of state government, it seems that the majority of the court, influenced by the nightmare of a socialistic state contributing nothing to the national revenue, drew the line in this case much too sharply. Nothing comes more clearly within the police power of a state than the liquor trade. Nothing is more clearly a governmental function than the exercise of the police power. If, as the Supreme Court itself has held,<sup>12</sup> the state in engaging in the liquor business, is making a valid use of its police power, and is not engaging in a private business for profit, it would seem to follow that in so doing it is performing a governmental function which must not be interfered with by taxation.

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**POWERS COUPLED WITH AN INTEREST.** — The authority of an agent may, in general, be revoked at will by a principal. But where a power of attorney is given as security, it is irrevocable *inter vivos*.<sup>1</sup> To the general rule that all agencies are terminated by the principal's death, the only well-recognized exception is that of a power coupled with an interest. The act of the agent being conceived of as the act of the principal, this necessarily follows, since the act of a dead principal would be an impossibility; but where the agency is coupled with an interest, the act may be valid as the act of the agent even after the principal's death. To define this interest, therefore, becomes of grave importance.

The prevailing American view is that the interest must be an interest

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<sup>11</sup> See *Vance v. Vandercook Co.* (No. 1), 170 U. S. 438.

<sup>12</sup> *Vance v. Vandercook Co.*, *supra*.

<sup>1</sup> *Walsh v. Whitcomb*, 2 Esp. 565.

in the thing itself which constitutes the subject matter of the agency, and not a mere interest in the proceeds from the exercise of the power.<sup>2</sup> Thus a power of sale in a mortgage, a power to carry on a business together with an assignment of the business, are powers coupled with an interest;<sup>3</sup> while a power to sell property and reimburse one's self from the proceeds, a power to an insurance agent to retain fifty per cent of the premiums as commissions, are examples of powers not coupled with an interest.<sup>4</sup> Mere possession of the subject matter of the agency has been held in an early New York case to be such an interest as will render the power irrevocable,<sup>5</sup> though this seems to be doubted in a recent decision of the Appellate Division of the New York Supreme Court which fails to mention the earlier adjudication. *Hoffman, Administrator v. Union Dime Savings Institution*, 109 N. Y. App. Div. 24. An apparent extension of the rule to an entirely new class of cases is made by the United States Supreme Court in holding that a power given to a firm of attorneys to prosecute and compromise a suit and to receive a percentage of the proceeds as compensation is not terminated by the principal's death, being coupled with an interest.<sup>6</sup> Its principle has, however, been limited and in effect, it would seem, overruled by a subsequent decision of the same court in which the only distinction made was that the authority did not include a power to compromise.<sup>7</sup> The trend of recent decisions seems to favor strongly the narrower definition.<sup>8</sup> The conception of a power coupled with an interest is found in Coke, whose definition corresponds with that to be found in the American cases.<sup>9</sup>

The modern English view, however, is said to be broader. Where a power is given for a valuable consideration to secure some benefit to the donee of the authority, the power is said to be coupled with such interest as to make it irrevocable.<sup>10</sup> This does not require an interest in the subject matter of the agency; an interest in the proceeds from the exercise of the power is sufficient. On the continent, indeed, the law seems settled in favor of the broader rule.<sup>11</sup> The issue in the English cases, however, was as to the revocability of the power *inter vivos*, an entirely different thing from its termination by death; and they could have been decided in the same way under the narrower rule laid down by Chief Justice Marshall.<sup>2</sup> While the statements of text-writers and the language used by courts undoubtedly do go so far as to consider such a power not terminated by the principal's death, no express decision has been found in support of the broader doctrine.

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CIVIL LIABILITY ARISING FROM VIOLATION OF MUNICIPAL ORDINANCES. — An exception, everywhere recognized in the United States, to the fun-

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<sup>2</sup> *Hunt v. Rousmanier's Admrs.*, 8 Wheat. (U. S.) 174.

<sup>3</sup> *Conners v. Holland*, 113 Mass. 50; *Durbrow v. Eppens*, 65 N. J. Law 10.

<sup>4</sup> *Fisher v. Southern Loan & Trust Co.*, 138 N. C. 90; *Andrews v. Travelers' Insurance Co.*, 24 Ky. Law Rep. 844.

<sup>5</sup> *Knapp v. Alvord*, 10 Paige (N. Y.) 205.

<sup>6</sup> *Jeffries, Admr. v. The Mutual Life Insurance Co.*, 110 U. S. 305.

<sup>7</sup> *Missouri, ex rel. Walker v. Walker*, 125 U. S. 339.

<sup>8</sup> *Fisher v. Southern Loan & Trust Co.*, *supra*; *Andrews v. Travelers' Insurance Co.*, *supra*; *Black v. Harsha*, 7 Kan. App. 794.

<sup>9</sup> *Co. Litt.* 49b, 52b, 181b.

<sup>10</sup> *Smart v. Sandars*, 5 C. B. 895, 917; *In re Hannan's Express Gold Mining & Developing Co.*, [1896] 2 Ch. 643.

<sup>11</sup> See 1 *Holtzendorff, Encyklopädie der Rechtswissenschaft* 599.